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# FROM PARTY DISCIPLINE TO ELECTORAL MANDATE: RE-ENGINEERING INDIA'S ANTI-DEFECTION LAW AFTER *SUBHASH DESAI* AND *PADI KAUSHIK REDDY*

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## ABSTRACT

India's anti-defection law was enacted to protect electoral mandates and governmental stability, yet its institutional design increasingly produces the opposite risk: an individual legislator may lose office for dissent, while an organised faction may change the political control of a House by assembling the numerical shield of Paragraph 4. This paper offers a doctrinal and institutional study of the Tenth Schedule, updated through 4 August 2026. It traces the law from the Fifty-second and Ninety-first Constitutional Amendments through the Supreme Court's leading decisions, with particular attention to *Subhash Desai v. Principal Secretary, Governor of Maharashtra* and the 2025 decision in *Padi Kaushik Reddy v. State of Telangana*. It also examines the pending 2026 challenge in *Kapil Sibal v. Union of India* concerning the merger defence. The paper identifies two structural asymmetries: an asymmetry of scale, under which collective defection may receive greater protection than individual dissent, and an asymmetry of time, under which a delayed disqualification ruling may be legally retrospective but politically ineffective. It proposes a Mandate-Integrity Model: limited whips, independent adjudication, enforceable timelines, a genuine organisational-merger requirement, public procedural records and calibrated interim protection. The central claim is that stability cannot be secured by converting representatives into delegates of party leadership; it requires a law that distinguishes legitimate legislative conscience from mandate-altering political migration.

**Keywords:** Anti-defection; Tenth Schedule; Speaker; judicial review; merger; political party; legislative party; constitutional morality; free vote; India.

## I. INTRODUCTION: THE DEMOCRATIC PARADOX OF PARTY LOYALTY

Political defection occupies an uneasy space between legality and democratic morality. A representative is elected from a territorial constituency, but in most contemporary elections the party label, programme, leadership and organisational resources materially shape the electorate's choice. When an elected member abandons that affiliation after the poll, the act may defeat the collective mandate; when the same member is compelled to vote on every question according to a central party direction, representative deliberation may be reduced to numerical obedience. India's Tenth Schedule attempts to resolve this tension through disqualification. Introduced by the Constitution (Fifty-second Amendment) Act, 1985, it was a response to decades of instability and opportunistic floor-crossing.<sup>12</sup>

The constitutional compromise was upheld, with an important qualification, in *Kihoto Hollohan v. Zachillhu*. The Supreme Court treated the Speaker's decision as adjudicatory rather than purely legislative and preserved judicial review on established public-law grounds.<sup>3</sup> Yet the practical weaknesses of the arrangement did not disappear. Speakers often decide petitions after politically decisive votes, resignations may be timed to avoid an adverse order, party factions compete for recognition as the 'real' party, and Paragraph 4 can be invoked to characterise coordinated defections as mergers. The resulting litigation is not incidental to the scheme; it reveals a recurring conflict among party autonomy, legislative procedure, judicial power and the continuity of elected government.

This paper addresses four questions. First, what conception of representation underlies the Tenth Schedule: constituency representation, party mandate or governmental stability? Secondly, how has the Supreme Court defined voluntary surrender of party membership, the authority to issue a whip, the legal effect of resignation and the reviewability of Speaker delay? Thirdly, do the merger exception and the absence of a constitutionally fixed timeline create incentives for strategic defection? Fourthly, what reforms can preserve the anti-corruption and stability objectives of the law without extinguishing deliberative freedom? The method is doctrinal, based on constitutional text, amendments, reported decisions and official reform reports, supplemented by analysis of the latest pending litigation as at 4 August 2026.

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<sup>1</sup> G.C. Malhotra, *Anti-Defection Law in India and the Commonwealth* 1-14 (Lok Sabha Secretariat, New Delhi, 2005).

<sup>2</sup> The Constitution (Fifty-second Amendment) Act, 1985, s. 6 (w.e.f. Mar. 1, 1985).

<sup>3</sup> *Kihoto Hollohan v. Zachillhu*, 1992 Supp (2) SCC 651.

The paper's original contribution is the identification of a double structural asymmetry. The first is an *asymmetry of scale*: the law is most certain against a lone legislator, but numerical coordination may unlock the Paragraph 4 defence. The second is an *asymmetry of time*: disqualification is conceptually linked to the date of the prohibited act, yet delay permits the member to vote, influence government formation and alter the political status quo before adjudication. A workable reform must therefore deal simultaneously with the substantive grounds of disqualification and the temporal architecture of decision-making. Replacing the Speaker alone, without narrowing the whip or correcting the merger rule, would address only one part of the problem.

## II. CONSTITUTIONAL DESIGN: FROM 'AAYA RAM' TO THE TENTH SCHEDULE

The expression 'defection' is not itself defined in the Constitution. The Tenth Schedule instead specifies conduct that produces disqualification. This choice is significant. It avoids moral labels and creates legal tests, but those tests depend heavily on inference. The member's formal resignation from a political party is only one possible fact; conduct, public declarations, participation in rival political activity and voting behaviour may also establish that membership has been voluntarily given up. The law therefore regulates allegiance through a mixture of status, conduct and legislative voting.

Paragraph 2(1) contains the principal rules for members elected on a political-party ticket. A member is disqualified if he or she voluntarily gives up membership of that party, or votes or abstains contrary to a direction issued by the party or by a person or authority authorised by it, unless prior permission was obtained or the conduct is condoned within fifteen days. Paragraph 2 also contains distinct rules for independent and nominated members. An independent member is disqualified upon joining a political party after election; a nominated member may join a party within six months of taking the seat but not thereafter without attracting disqualification.<sup>4</sup>

Paragraph 6 entrusts questions of disqualification to the Chairman or Speaker of the House, subject to the special rule applicable when the presiding officer is personally concerned. The text declares the decision final, but *Kihoto Hollohan* held that finality does not exclude constitutional review. Paragraph 8 permits rules governing petitions and procedure, while Paragraph 7 sought to exclude court jurisdiction. The latter was invalidated because the

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<sup>4</sup> The Constitution of India, Tenth Schedule, para 2.

constitutional amendment had not been ratified by the States as required for an amendment affecting the jurisdiction of the Supreme Court and High Courts.<sup>56</sup>

The original scheme also contained Paragraph 3, which protected a 'split' supported by at least one-third of the legislature party. In practice, the provision converted head-counting into a defence and encouraged group migration. The Constitution (Ninety-first Amendment) Act, 2003 deleted Paragraph 3, restricted the size of ministries and added consequences preventing a disqualified member from immediately enjoying ministerial or remunerative political office. However, Paragraph 4 retained protection for members where the original political party merges with another party and not less than two-thirds of the legislature party agree to the merger.<sup>78</sup>

The difference between the deleted split provision and the surviving merger provision is more than arithmetic. A split treated internal fragmentation as sufficient; a merger is textually tied to a transformation of the original political party. Paragraph 4(2), however, creates a deeming rule under which a merger is treated as having occurred if at least two-thirds of the legislature party agree. The relationship between this deeming clause and an actual organisational decision by the political party is now one of the most consequential unresolved questions in the field. It determines whether Paragraph 4 is a narrow exception for genuine party reorganisation or a lawful route for legislative factions to move en bloc.

Reform bodies have repeatedly criticised overbreadth and institutional bias. The Dinesh Goswami Committee favoured restricting whip-based disqualification to confidence votes, money bills and the motion of thanks to the President.<sup>9</sup> The Law Commission's 170th Report proposed treating pre-poll coalitions as political parties for this purpose and reconsidering exemptions that enable group defection.<sup>10</sup> The National Commission to Review the Working of the Constitution went further: defectors should resign and face the electorate, should be barred from remunerative political office for the remaining term or until a fresh election, and disqualification should be decided by the Election Commission rather than the Speaker.<sup>11</sup> These

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<sup>5</sup> Id., Tenth Schedule, para 6.

<sup>6</sup> Kihoto Hollohan v. Zachillhu, 1992 Supp (2) SCC 651.

<sup>7</sup> The Constitution (Ninety-first Amendment) Act, 2003, ss. 2-5 (w.e.f. Jan. 1, 2004).

<sup>8</sup> The Constitution of India, arts. 75(1B), 164(1B) and 361B.

<sup>9</sup> Committee on Electoral Reforms, Report of the Committee on Electoral Reforms 56-57 (Ministry of Law and Justice, Government of India, 1990).

<sup>10</sup> Law Commission of India, 170th Report on Reform of the Electoral Laws, paras 3.4.1-3.4.4 (1999).

<sup>11</sup> National Commission to Review the Working of the Constitution, Report, vol. I, para 4.18.2 (2002).

recommendations show a persistent consensus on the problem, though not on the precise constitutional cure.

### **III. THE LEGAL ARCHITECTURE: MEMBERSHIP, WHIPS, MERGER AND ADJUDICATION**

A coherent interpretation begins by separating three institutions that political practice often conflates: the political party, the legislature party and the House. The political party exists beyond the legislature. It selects candidates, adopts a constitution and programme, campaigns before the electorate and maintains an organisation. The legislature party consists of elected members belonging to that party within a particular House. The House is the constitutional forum in which all members deliberate and vote. Anti-defection law sits at the intersection of these institutions but cannot erase their distinct legal identities.

The first ground, voluntarily giving up membership, protects the continuity of the electoral affiliation. It is not confined to a signed resignation because a member could otherwise publicly join a rival formation while formally retaining the original party card. At the same time, the phrase cannot be equated with disagreement. Criticism of party leadership, voting on an issue where no valid direction exists, or participation in internal reform cannot automatically prove abandonment. The evidentiary inquiry must ask whether conduct, viewed objectively and cumulatively, demonstrates a decision to cease belonging to the party on whose ticket the member was elected.

The second ground, defiance of a direction, is more intrusive. It enables disqualification even when the member remains within the party and acts openly in the House. Its democratic justification is strongest where the vote decides whether the government survives, authorises public expenditure or implements an electoral commitment central to a coalition's mandate. It is weakest on ordinary legislation, private members' business and committee work, where free deliberation can improve accountability. Because the constitutional consequence is loss of the seat, the authority, scope, communication and timing of the direction should be proved with procedural exactness.

The fifteen-day condonation window recognises that party discipline is partly internal. It permits a party to forgive an unauthorised vote. Yet it also creates unequal enforcement possibilities: leadership may condone loyalists and proceed against internal critics for identical

conduct. Judicial review cannot ordinarily examine political wisdom, but it can insist that the direction originated from the proper authority, that the member received meaningful notice and that the Speaker applied a consistent legal test. The Schedule should not become an instrument for retroactive punishment through an ambiguous or unofficial whip.

Paragraph 4 must be read as an exception to disqualification, not as an independent method of changing party affiliation. The burden should rest on those invoking it. They must establish the identity of the original political party, the institutional act said to constitute merger, the relevant strength of the legislature party and the concurrence of the constitutionally required number. A bare claim that two-thirds of legislators have crossed over risks reversing the structure of the paragraph: the political party would be deemed to have merged because legislators defected, and their defection would be protected because the party is deemed to have merged.

The Speaker's role also has two dimensions. As presiding officer, the Speaker regulates the House and recognises leaders for parliamentary functioning. As Paragraph 6 tribunal, the Speaker determines a dispute affecting membership. The latter function must comply with natural justice and is reviewable. Administrative recognition of a whip or legislature-party leader may supply evidence, but it cannot conclusively determine which political party authorised that person. Otherwise, a faction's numerical control inside the House could pre-empt the adjudication that the Tenth Schedule requires.

#### **IV. JUDICIAL DEVELOPMENT: FROM REVIEW OF ORDERS TO CONTROL OF DELAY**

##### **A. Judicial Review and the Speaker as Tribunal**

The majority in *Kihoto Hollohan* upheld the Tenth Schedule's substantive provisions and treated anti-defection adjudication as compatible with parliamentary democracy. It rejected the argument that vesting the function in the Speaker necessarily violated the basic structure. At the same time, it characterised the Speaker, while deciding a Paragraph 6 dispute, as a tribunal. Judicial review under Articles 136, 226 and 227 survives after the decision and extends to violation of constitutional mandates, mala fides, non-compliance with natural justice and perversity. Courts ordinarily avoid interlocutory intervention before the Speaker decides, except where exceptional and immediate consequences justify it.<sup>12</sup>

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<sup>12</sup> *Kihoto Hollohan v. Zachillhu*, 1992 Supp (2) SCC 651 at 711-714, 726-727.

The doctrinal compromise in *Kihoto* was institutionally optimistic. It assumed that the dignity and traditions of the office would generally neutralise partisan affiliation. Subsequent cases demonstrate that the legal problem is not simply actual bias in an individual order. The timetable itself may become partisan: a petition can be accelerated to remove opponents before a confidence vote or left undecided while defectors support a new majority. Judicial review after the event is therefore necessary but not always sufficient. The later jurisprudence progressively shifted from reviewing final orders to enforcing the duty to decide.

### **B. Voluntarily Giving Up Membership: Conduct Beyond Resignation**

In *Ravi S. Naik v. Union of India*, the Court held that 'voluntarily giving up membership' has a wider meaning than resignation. Membership may be relinquished by conduct, and the Speaker may draw a reasonable inference from proved facts.<sup>13</sup> This interpretation is indispensable to the effectiveness of the law, but it places a premium on fair evidentiary procedure. The inference must arise from conduct inconsistent with continued membership, not from mere ideological deviation or criticism.

*G. Viswanathan v. Hon'ble Speaker, Tamil Nadu Legislative Assembly* addressed members expelled from their political party. The Court held that, for the purpose of the Tenth Schedule, an elected member continues to be treated as belonging to the party that set him up; joining another party after expulsion can therefore attract disqualification.<sup>14</sup> The ruling prevents expulsion from becoming a gateway for unregulated migration, though it also illustrates the Schedule's legal fiction: organisational membership and constitutional attribution may diverge.

In *Jagjit Singh v. State of Haryana*, independent members publicly associated themselves with a political party after election. The Court accepted that joining may be proved by conduct and not only by formal enrolment. It also emphasised that the material relied upon must be disclosed and a meaningful opportunity to respond must be afforded.<sup>15</sup> The case connects substance and procedure: anti-defection law would be easily evaded if only formal admission counted, but an expansive conduct test is legitimate only when tested through natural justice.

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<sup>13</sup> *Ravi S. Naik v. Union of India*, 1994 Supp (2) SCC 641 at 649-651.

<sup>14</sup> *G. Viswanathan v. Hon'ble Speaker, Tamil Nadu Legislative Assembly*, (1996) 2 SCC 353.

<sup>15</sup> *Jagjit Singh v. State of Haryana*, (2006) 11 SCC 1 at 27-32.

### C. Sequence, Delay and the Power to Grant Effective Relief

*Rajendra Singh Rana v. Swami Prasad Maurya* concerned legislators who claimed the benefit of the then-existing split provision. The Speaker recognised the alleged split without first deciding the pending disqualification petitions. The Supreme Court held that the foundational question of disqualification could not be bypassed and, in the exceptional circumstances, itself declared the members disqualified. The judgment also affirmed that disqualification attaches when the prohibited conduct occurs, not merely when the Speaker later records it.<sup>16</sup> This relation-back principle preserves legal coherence but cannot, by itself, undo every political consequence of delayed adjudication.

*Balchandra L. Jarkiholi v. B.S. Yeddyurappa* demonstrates the opposite temporal risk: excessive speed. The Karnataka Speaker acted in a compressed process before a trust vote. The Supreme Court set aside the disqualification orders because the members had not received a fair and adequate opportunity and because the reasoning did not satisfy the requirements of the Schedule.<sup>17</sup> Together, *Rana* and *Jarkiholi* show that 'prompt' does not mean pre-determined. The constitutionally appropriate standard is expeditious adjudication with full procedural fairness.

In *Nabam Rebia and Bamang Felix v. Deputy Speaker, Arunachal Pradesh Legislative Assembly*, the majority held that a Speaker facing a pending notice for removal under Article 179(c) should not decide disqualification petitions. The reasoning sought to prevent a presiding officer from using disqualification to alter the electorate entitled to vote on his or her own removal.<sup>18</sup> The rule, however, can itself invite strategic notices designed to disable the tribunal. Its correctness was later referred to a larger Bench in *Subhash Desai*, leaving a significant institutional question unresolved.

*Shrimanth Balasaheb Patil v. Hon'ble Speaker, Karnataka Legislative Assembly* clarified the interaction between resignation and disqualification. A pending resignation does not extinguish jurisdiction over earlier defection. The Speaker may examine whether disqualifying conduct occurred before resignation. However, the Speaker cannot impose an additional prohibition on contesting elections for the remainder of the House beyond the constitutional consequences

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<sup>16</sup> *Rajendra Singh Rana v. Swami Prasad Maurya*, (2007) 4 SCC 270 at 303-309.

<sup>17</sup> *Balchandra L. Jarkiholi v. B.S. Yeddyurappa*, (2011) 7 SCC 1.

<sup>18</sup> *Nabam Rebia and Bamang Felix v. Deputy Speaker, Arunachal Pradesh Legislative Assembly*, (2016) 8 SCC 1.



prescribed by the Ninety-first Amendment.<sup>19</sup> The decision prevents resignation from becoming an immunity device while maintaining that sanctions must remain textually authorised.

The decisive move on delay came in *Keisham Meghachandra Singh v. Hon'ble Speaker, Manipur Legislative Assembly*. The Court held that, absent exceptional circumstances, disqualification petitions should ordinarily be decided within three months. It also invited Parliament to consider replacing the Speaker with a permanent tribunal or another independent mechanism.<sup>20</sup> Although the three-month standard was judicially framed rather than written into Paragraph 6, it derives from the constitutional purpose: a remedy delivered after the political event may cease to be a remedy.

Procedural limits were reaffirmed in *Kshetrimayum Biren Singh v. Hon'ble Speaker, Manipur Legislative Assembly*. The Supreme Court interfered where disqualification had been ordered without adequate opportunity and on an insufficiently tested record, and remitted the matter.<sup>21</sup> The case is a reminder that an anti-defection tribunal cannot cure delay by sacrificing due process. Speed and fairness are concurrent constitutional duties, not competing options from which the Speaker may select one.

#### **D. Subhash Desai: Political Party Supremacy and Constitutional Boundaries**

The Maharashtra political crisis required a Constitution Bench to distinguish the political party from its legislative wing. In *Subhash Desai v. Principal Secretary, Governor of Maharashtra*, the Court held that the power to appoint the whip and the leader of the legislature party belongs to the political party, and the Speaker must identify the person duly authorised by that political party after an appropriate inquiry.<sup>22</sup> A faction cannot acquire the party's constitutional voice merely by demonstrating numerical strength among legislators. This is a foundational holding because elections are contested by political parties as organisations, not by free-standing post-election legislative collectives.

The Court also held that questions of disqualification ordinarily belong to the Speaker at first instance; the Supreme Court should not routinely decide them merely because a political crisis

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<sup>19</sup> *Shrimanth Balasaheb Patil v. Hon'ble Speaker, Karnataka Legislative Assembly*, (2020) 2 SCC 595 at 650-656.

<sup>20</sup> *Keisham Meghachandra Singh v. Hon'ble Speaker, Manipur Legislative Assembly*, (2021) 16 SCC 503 at 519-522.

<sup>21</sup> *Kshetrimayum Biren Singh v. Hon'ble Speaker, Manipur Legislative Assembly*, (2022) 2 SCC 759.

<sup>22</sup> *Subhash Desai v. Principal Secretary, Governor of Maharashtra*, (2024) 2 SCC 719 at 817-826.

has reached the constitutional courts. The Speaker must decide within a reasonable period. Pending disqualification does not automatically prevent a member from participating in House proceedings, and the validity of those proceedings does not depend on the eventual outcome of the petition.<sup>23</sup> This protects institutional continuity and the presumption of membership, but it heightens the cost of delay: members whose status is contested may cast politically decisive votes that remain effective even if they are later disqualified.

On *Nabam Rebia*, *Subhash Desai* referred to a larger Bench the question whether a pending removal notice disables the Speaker from acting under the Tenth Schedule.<sup>24</sup> The referral recognises that both available rules carry risks. Allowing the Speaker to act may facilitate self-protection; disabling the Speaker may allow a tactical removal notice to freeze anti-defection proceedings. Any final solution should focus on institutional independence rather than on a binary rule that presumes either the notice or the petition to be bona fide.

The broader significance of *Subhash Desai* lies in its constitutional sociology. It rejects the idea that the legislature party is sovereign over the political party, yet it does not transform party leadership into an unreviewable authority. The Speaker must inquire into the party constitution and relevant material. This approach supports a stricter reading of Paragraph 4: if the political party is the source of the whip and electoral identity, the merger defence should not arise merely because legislators have assembled two-thirds support inside the House.

#### **E. *Padi Kaushik Reddy*: Delay as a Justiciable Constitutional Failure**

The most recent final Supreme Court judgment squarely strengthening the law against delay is *Padi Kaushik Reddy v. State of Telangana*, delivered on 31 July 2025. Disqualification petitions concerning ten members had remained substantially unprocessed; even notices had not been issued for months. The Court rejected the claim that Articles 122 and 212 immunised the Speaker's inaction. When deciding under Paragraph 6, the Speaker acts as a tribunal and is subject to the supervisory and appellate constitutional jurisdiction of the High Courts and Supreme Court.<sup>25</sup> Parliamentary privilege protects legislative proceedings; it does not create an enclave of non-performance for a constitutional tribunal.

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<sup>23</sup> Id. at 845-856.

<sup>24</sup> Id. at 790-801.

<sup>25</sup> *Padi Kaushik Reddy v. State of Telangana*, 2025 INSC 912, paras 156-169.

The Court read *Keisham Meghachandra Singh* and *Subhash Desai* together. The former's three-month norm had not been displaced; the latter's reference to a reasonable period did not authorise open-ended discretion. On the facts, prolonged failure even to commence the process was incompatible with expedition. The Court directed the Speaker to conclude all ten petitions within three months and permitted an adverse inference where members deliberately avoided service or sought adjournments.<sup>26</sup> The judgment thus converted a general constitutional expectation into an enforceable case-specific deadline.

*Padi Kaushik Reddy* is important for three reasons. First, it treats delay as reviewable in its own right, without requiring the court to await a final order. Secondly, it distinguishes the Speaker's adjudicatory function from protected internal proceedings of the House. Thirdly, it candidly questions whether Parliament's chosen institutional mechanism remains workable. The Court did not rewrite Paragraph 6 or transfer every pending petition to an external tribunal, but it placed constitutional courts in the role of temporal guarantor. That is a major evolution from the predominantly post-decisional review contemplated in *Kihoto*.

The judgment does not eliminate the asymmetry of time. A court-imposed deadline usually follows litigation, and litigation itself consumes time. Moreover, under *Subhash Desai*, House votes cast before final disqualification generally retain legal effect. The relation-back doctrine therefore coexists with political finality. *Padi* narrows the window for strategic inaction, but a durable system requires an automatic timetable, transparent procedural milestones and an adjudicator whose tenure does not depend on the very majority affected by the dispute.

## V. THE STRUCTURAL CONTRADICTIONS OF THE PRESENT REGIME

The anti-defection regime pursues at least three legitimate aims: preserving the electoral mandate, preventing corruption or office-induced switching, and maintaining stable government. These aims overlap but are not identical. A member may dissent without changing party; a group may change party without immediately toppling government; and a government may fall because coalition partners withdraw support without any member violating the Schedule. The law becomes overbroad when it treats every breach of a party direction as equivalent to corrupt defection, and underinclusive when a coordinated change of allegiance escapes because it satisfies a numerical threshold.

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<sup>26</sup> Id., paras 170-178.

The asymmetry of scale is clearest when Paragraphs 2 and 4 are compared. One member who votes from conscience against an ordinary Bill may be exposed to disqualification. A sufficiently large faction that joins a rival formation may invoke merger. The apparent rationale is that a two-thirds decision reflects a legitimate institutional realignment rather than individual inducement. Yet numbers do not prove legitimacy. A larger transaction may be more capable of changing government and may involve stronger incentives. The relevant distinction should be between genuine organisational merger and legislative migration, not between small and large groups alone.

The law also centralises party authority without imposing corresponding requirements of internal democracy. A direction may be issued by a leadership structure whose own selection and deliberative processes are opaque. Members are then constitutionally penalised for disobedience. This imbalance matters because party discipline is justified as an extension of the electoral programme; when party decisions are not internally accountable, the connection to voter choice weakens. Anti-defection reform should therefore be linked to public party constitutions, identifiable authorised bodies, written reasons for exceptional whips and transparent communication to members.

The asymmetry of time operates through a sequence of irreversible events. A faction announces withdrawal, a confidence vote is scheduled, rival whips are issued, resignation letters are tendered and disqualification petitions are filed. The Speaker's choice of which matter to decide first may determine the effective strength of the House. Even if a later judgment holds that disqualification related back to an earlier date, a ministry may have resigned, a new ministry may have taken office, and subsequent political alliances may have consolidated. Legal retrospectivity does not guarantee political restoration.

An absolute interim suspension upon filing would create its own abuse. Party leaders could neutralise inconvenient members through weak petitions immediately before a vote. Conversely, permitting full participation until final decision encourages delay. The solution lies in independent *prima facie* scrutiny. Only where a neutral adjudicator finds clear evidence of voluntary surrender or an invalid rival whip should a narrowly tailored interim consequence apply, and ordinarily only to confidence, no-confidence and government-formation votes. Ordinary constituency representation should continue until final adjudication.

The Speaker's constitutional position is not dishonourable, but structurally conflicted. The

Speaker is elected by a House majority, often remains politically identified with a party and may face removal if the majority changes. Anti-defection disputes directly determine that majority. Judicial review can correct legal errors, but it cannot make the first-instance forum independent. The repeated recurrence of delay and accelerated proceedings across different States suggests a design problem rather than isolated misconduct. Reform should respond to institutional incentives, not rely only on exhortations to neutrality.

Finally, the law can distort legislative deliberation. When every important vote is whipped, committees and floor debate become performative because members know that the decisive choice has been made outside the House. The Constitution creates legislatures to deliberate, scrutinise the executive and represent diverse territorial interests. Party government is indispensable, but party unity need not require compulsory uniformity on all questions. The stability objective is satisfied by binding directions on survival and supply; broader policy discipline can ordinarily be enforced through internal political sanctions rather than constitutional loss of office.

## VI. THE 2026 MERGER CHALLENGE: A CONSTITUTIONAL CROSSROADS

As at 4 August 2026, the newest major development is a pending Article 32 petition, *Kapil Sibal v. Union of India*, Diary No. 42846/2026. On 27 July 2026, a Bench of Justices P.S. Narasimha and Alok Aradhe issued notice to the Union Government. The petition challenges an interpretation of Paragraph 4 that permits legislators to claim merger protection without an antecedent or genuine merger of the original political party.<sup>2728</sup>

The issue should be stated carefully because no final ruling has yet been delivered. Paragraph 4(1) protects a member where the 'original political party' merges and the member either joins the resulting group or refuses and functions separately. Paragraph 4(2) says a merger shall be deemed to have taken place if, and only if, not less than two-thirds of the legislature party agree. One reading treats two-thirds legislative agreement as sufficient evidence and legal completion of merger. The competing reading treats it as a threshold that operates only when there is a merger decision attributable to the original political party. The text contains elements

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<sup>27</sup> *Kapil Sibal v. Union of India*, W.P. (C) Diary No. 42846/2026 (SC, notice issued July 27, 2026) (pending).

<sup>28</sup> Gursimran Kaur Bakshi, "Supreme Court Issues Notice on Kapil Sibal's Petition Challenging 10th Schedule Interpretation Allowing Defections as Mergers," LiveLaw, July 27, 2026, available at: <https://www.livelaw.in/top-stories/supreme-court-issues-notice-on-kapil-sibals-petition-challenging-10th-schedule-interpretation-allowing-defections-as-mergers-542997> (last visited on Aug. 4, 2026).

supporting both arguments, but constitutional purpose and *Subhash Desai* favour a genuine organisational event.

A purely legislative merger rule reproduces, at a higher threshold, the defect of the former split exception. It allows representatives to change the party mandate through head-counting and makes the organisational party legally disappear without participating in its own merger. A strict organisational rule, however, must also identify the competent party body and avoid endless factual disputes between rival office-bearers. The Court may therefore need to formulate evidentiary standards: production of the registered party constitution, a resolution of the authorised organ, notice and quorum records, and proof that the decision precedes or forms part of the legislative realignment.

The pending case offers an opportunity to reconcile Paragraph 4 with *Subhash Desai*. The latter places constitutional significance on the political party as the source of electoral identity and whip authority. It would be anomalous if the legislature party could not appoint a whip contrary to the political party but could, by numerical declaration alone, merge that political party into another. Until the Supreme Court rules, however, the 2026 proceeding is a live controversy and not binding precedent. Any scholarly conclusion must distinguish the case's reform potential from settled law.

## VII. A MANDATE-INTEGRITY MODEL FOR REFORM

The appropriate reform is neither abolition nor indiscriminate expansion. Complete abolition would revive incentives for post-election bargaining and could destabilise parliamentary government. Indiscriminate expansion would constitutionalise party command over every legislative act. This paper proposes a Mandate-Integrity Model built on six connected elements. Its organising principle is that disqualification should respond to conduct that changes or repudiates the electoral mandate, while ordinary policy disagreement should remain within democratic politics.

### 1. Narrow the Constitutional Whip

Paragraph 2(1)(b) should be amended so that disqualification for voting or abstaining contrary to a direction applies only to: (i) confidence or no-confidence motions; (ii) money bills, appropriation bills and votes whose defeat conventionally requires the government to resign;

and (iii) a narrowly defined class of measures expressly identified before the election or in a written coalition agreement as fundamental to government formation. A party may issue political whips on other matters, but breach should attract internal discipline rather than loss of the seat. This approach substantially reflects the Dinesh Goswami Committee's insight while adapting it to coalition government.

A valid constitutional whip should be in writing, specify the motion and voting requirement, identify the party organ authorising it, and be served through a verifiable public registry maintained by the House secretariat. Retrospective, oral or ambiguous directions should not support disqualification. The Speaker or tribunal should independently verify authorisation under the party constitution, as *Subhash Desai* requires, rather than relying on the numerical assertion of a legislative faction.

## **2. Replace the Interested Adjudicator**

Paragraph 6 should be amended to vest first-instance jurisdiction in an independent Anti-Defection Tribunal. A workable model would comprise a retired Supreme Court or High Court judge as chairperson and two members with constitutional or electoral expertise, selected through a committee including the Prime Minister or Chief Minister, the Leader of Opposition and the Chief Justice of India or the relevant High Court. An alternative—decision by the President or Governor on the binding opinion of the Election Commission—has support in reform reports, but a specialised tribunal may provide fuller evidentiary procedure and reasoned adjudication.

The Speaker should retain a limited administrative role: receiving petitions, preserving House records and transmitting the matter within forty-eight hours. This respects legislative autonomy without requiring the presiding officer to decide a dispute that determines the majority on which the office depends. Appeals should lie directly to the Supreme Court for parliamentary cases and to the jurisdictional High Court, with an expedited further appeal, for State cases. Constitutional review should remain available for jurisdictional and procedural defects.

## **3. Constitutionalise Time**

The timetable should be automatic rather than litigation-dependent: scrutiny and service within seven days; response within fourteen days; disclosure and completion of pleadings within thirty

days; hearing within forty-five days; and a reasoned final order within sixty days, extendable to ninety days only by a publicly reasoned order based on exceptional circumstances. Failure to comply should permit immediate judicial directions and, after the outer limit, transfer of the matter to a designated judicial panel. The period must accommodate natural justice, but no participant should benefit from evasion of service or repetitive adjournment, consistent with *Padi Kaushik Reddy*.

All procedural events should be published online: date of filing, date of service, pleadings, interim orders, hearing dates and final order, subject to redaction of genuinely protected information. Transparency changes incentives. Delay that is visible and attributable is harder to use as an invisible political strategy. It also enables courts to enforce the timetable without deciding disputed facts prematurely.

#### **4. Adopt a Twin Institutional Test for Merger**

Paragraph 4 should be clarified to require both limbs of a twin institutional test: first, a merger resolution validly adopted by the competent organ of the original political party under its registered constitution; secondly, agreement by not less than two-thirds of the members of the legislature party. The organisational decision must be authentic, antecedent or contemporaneous, and not manufactured after disqualifying conduct. Two-thirds support is necessary but not sufficient. This interpretation preserves the word 'merger', respects the distinction drawn in *Subhash Desai* and prevents Paragraph 4 from operating as a collective-defection licence.

Members who disagree with a genuine party merger should retain the Paragraph 4 option to function as a separate group. This protects political conscience during authentic organisational transformation. What should disappear is the ability of legislators alone to attribute a merger to the wider party. Where rival groups dispute control of the original party, the tribunal should consider the party constitution, decisions of competent organs and relevant Election Commission records, while avoiding mechanical reliance on legislative numbers.

#### **5. Calibrate Interim Consequences**

Filing a petition should not suspend membership. After notice and a short hearing, however, the independent tribunal may issue a *prima facie* order where documentary and undisputed



evidence strongly indicates voluntary abandonment or a false merger claim. The interim consequence should ordinarily be limited to exclusion from confidence, no-confidence and government-formation votes. The member should continue constituency work and participate in other proceedings. Such an order must expire unless the final case is decided within the statutory period. This prevents both strategic petitions and strategic delay.

Votes cast before an interim order should remain valid to protect legislative certainty. After a *prima facie* order, a prohibited vote should not be counted for determining governmental confidence. This prospective rule is more administrable than attempting to invalidate a chain of completed House proceedings after final disqualification. It aligns legal remedy with the moment at which mandate alteration is most consequential.

## **6. Link Party Discipline to Party Democracy**

Political parties seeking the constitutional benefit of disqualification should satisfy minimum transparency conditions. Their constitutions, authorised disciplinary organs, procedures for electing leadership and rules for issuing binding directions should be filed with the Election Commission and publicly accessible. A party that cannot identify the organ that authorised a whip should not be permitted to remove an elected representative on that basis. Internal democracy need not be judicially micromanaged, but constitutional sanctions require ascertainable and lawful authority.

The Model also requires a proportionality inquiry. The tribunal should ask: (a) did the conduct objectively repudiate party membership or a protected mandate vote; (b) was the party direction valid, necessary and properly communicated; and (c) was the procedure independent, timely and fair? These three axes—mandate, necessity and process—turn anti-defection adjudication away from labels and toward constitutional justification. They preserve deterrence against purchased or office-driven defection while restoring meaningful space for legislative judgment.

## **VIII. CONCLUSION**

India's anti-defection law is neither a failed idea nor a completed constitutional solution. It correctly recognises that post-election abandonment of party affiliation can betray voters and destabilise responsible government. But the present design protects stability unevenly. It may punish a single dissenting vote more readily than a coordinated political migration; it places

adjudication in an office dependent on House majority; and it allows time to separate legal disqualification from political consequence.

The Supreme Court has progressively limited these weaknesses. *Kihoto Hollohan* preserved judicial review; *Ravi S. Naik* and *Jagjit Singh* prevented formalism from defeating the conduct rule; *Rajendra Singh Rana* insisted on proper sequence and relation-back; *Shrimanth Balasaheb Patil* prevented resignation from erasing prior defection; *Keisham Meghachandra Singh* established a temporal norm; *Subhash Desai* restored the constitutional distinction between political and legislature parties; and *Padi Kaushik Reddy* made prolonged inaction judicially remediable. The pending *Kapil Sibal* petition may now determine whether the merger exception remains a narrow defence or becomes a numerical route around the law.

Judicial doctrine, however, cannot supply every missing institutional rule. A constitutional amendment should narrow the whip, create independent adjudication, impose automatic deadlines and require a genuine organisational merger plus two-thirds legislative agreement. Interim measures should be limited and proportionate, while party authority should be tied to transparent internal rules. The objective is not to make representatives politically unattached. It is to ensure that discipline protects the mandate without extinguishing deliberation, and that collective numbers do not legitimise what the Constitution would condemn when done one member at a time.